



Via Hand Delivery

May 26, 2015

Keith F. Higgins
Director
Division of Corporation Finance
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

Re: Preliminary Voting Information

Dear Mr. Higgins:

I am writing on behalf of the Council of Institutional Investors (CII), a non-profit association of corporate, public and union employee benefit plans, foundations and endowments with combined assets in excess of \$3 trillion. CII members include large, long-term shareowners responsible for safeguarding the retirement savings of millions of American workers.¹

The purpose of this letter is to provide you with an update on recent events relating to our long-standing concerns about the lack of impartiality in the disclosure of preliminary voting information and to reiterate our prior requests that the Securities and Exchange Commission (Commission or SEC) or SEC staff take action to address those concerns.²

¹ For more information about the Council of Institutional Investors (CII), including its members, please visit CII's website at <http://www.cii.org/members>.

² See Letter from Jeff Mahoney, General Counsel, Council of Institutional Investors, to Keith F. Higgins, Director, Division of Corporation Finance, U.S. Securities and Exchange Commission 3 (May 22, 2014), http://www.cii.org/files/issues_and_advocacy/correspondence/2014/05_22_14_letter_to_SEC.pdf ("We, therefore, respectfully request that the SEC respond to Broadridge's invitation and our repeated requests by promptly pursuing a limited scope amendment to Rule 14a-2(a).") [hereinafter May Letter]; Letter from Jeff Mahoney, General Counsel, Council of Institutional Investors, to Mr. Vikash Mohan, Program Analyst, Office of Financial Management, Securities and Exchange Commission 13 (Mar. 11, 2014), http://www.cii.org/files/issues_and_advocacy/correspondence/2014/03_11_14_CII_letter_to_SEC_strategic_plan.pdf ("We believe the prompt pursuit of one or more of our suggested actions would effectively resolve investor concerns surrounding interim vote tallies."); Letter from Jeff Mahoney, General Counsel, Council of Institutional Investors, to Keith F. Higgins, Director, Division of Corporation Finance, U.S. Securities and Exchange Commission 2 (Mar. 6, 2014), http://www.cii.org/files/issues_and_advocacy/correspondence/2014/03_06_14_CII_letter_SEC_proxy_distributors.pdf ("Since Broadridge has repeatedly been unable to operate in a manner that is fair to all interested parties, we believe it is time for the Division to intervene.") [hereinafter Mar Letter]; Letter from Ann Yerger, Executive Director, Council of Institutional Investors, to The Honorable Mary Jo White, Chairman, U.S. Securities and Exchange Commission 3 (May 17, 2013), http://www.cii.org/files/issues_and_advocacy/correspondence/2013/05_17_13_CII_Letter_Regarding_Proxy_Distributors.pdf ("CII urges the Commission . . . to prioritize an examination of the role, the oversight, and the accountability of proxy distributors and the lack of impartiality in the proxy process.").

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The letter also includes a suggestion on how the SEC staff might achieve the desired goal of impartiality in the disclosure of preliminary voting results in the near term until staff guidance or Commission rulemaking can be issued.

Investor Advisory Committee Recommendation and Analysis

As you are aware, since our most recent letter to you on this topic,³ the Commission's own Investor Advisory Committee (IAC) issued the following recommendation generally consistent with our prior requests:⁴

*That the staff of the Commission take the steps necessary to ensure that the exemption in Rule 14a-2(a)(1) is conditioned upon the broker (and any intermediary designated by the broker) acting in an impartial and ministerial fashion throughout the proxy process, including the disclosure of preliminary voting information.*⁵

In addition, the detailed analysis accompanying the IAC's recommendation raises at least two issues that we believe require further consideration by the SEC staff:

First, the IAC explained why the impartiality requirements of Rule 14a-2(a)(1)⁶ might be extended to the disclosure of preliminary voting information without SEC rulemaking.⁷ As you know, the IAC's views on this issue appear to be in conflict with the SEC staff conclusion that you communicated to us in person in April 2014 and by letter on June 25, 2014.⁸ In light of the IAC's analysis, we would respectfully request that the SEC staff reconsider its conclusion.

³ May Letter, *supra* note 2, at 2-3.

⁴ See, e.g., Mar Letter, *supra* note 2, at 1 ("CII urges the Division of Corporation Finance . . . to issue interpretative guidance to ensure a level playing field for any participant in an active solicitation.").

⁵ Recommendations of the Investor Advisory Committee: Impartiality in the Disclosure of Preliminary Voting Results 8 (Oct. 9, 2014), <http://www.sec.gov/spotlight/investor-advisory-committee-2012/impartiality-disclosure-prelim-voting-results.pdf>.

⁶ U.S. CODE OF FEDERAL REGULATIONS, 17 C.F.R. 240.14a-2, http://www.ecfr.gov/cgi-bin/text-idx?SID=cd27ca1a343d38bad053276643971b31&mc=true&node=se17.4.240_114a_62&rgn=div8 (as of May 15, 2015).

⁷ Recommendations of the Investor Advisory Committee at 10 n.52.

⁸ Letter from Keith F. Higgins, Director, Division of Corporation Finance, United States Securities and Exchange Commission, to Jeff Mahoney, General Counsel, Council of Institutional Investors 1 (June 25, 2014), http://www.cii.org/files/issues_and_advocacy/correspondence/2014/06_25_14_SEC_response.PDF ("As I mentioned in our April 2014 meeting . . . the staff cannot add such a requirement through an interpretation of the existing language in Rule 14a-2(a)(1).").

Second, the IAC's detailed analysis describes how NYSE Rule 451(b)(1)⁹ has led to the long-standing practice of Broadridge Financial Solutions (Broadridge) providing "preliminary proxy results" on individual matters to companies 10 to 15 days before the annual shareowner meeting and each day thereafter through the annual meeting date.¹⁰ Of particular note, the IAC's analysis indicates that the SEC has acknowledged that this practice was intended to "help issuers judge whether they have a quorum"¹¹

In light of this information, we would respectfully request that the SEC staff advise Broadridge that if it chooses to continue to voluntarily inform companies as to whether quorum has been reached, it shall do so by providing *only the interim total number of shares voted for each balloted item*,¹² thereby ending its practice of selectively disclosing detailed preliminary voting information to companies. We believe such an approach might allow the SEC staff to achieve the goal of impartiality in the disclosure of preliminary voting results in the near term at minimal cost to Broadridge. In the long-term, consistent with the IAC recommendation, we continue to support SEC staff guidance interpreting Rule 14a-2(a)(1) to require interim vote tallies on ballot items to be provided to any participant in an active solicitation upon request.¹³

Broadridge's Unexpected Rejection of Three-Party Confidentiality Agreement

As you also are aware, while awaiting SEC staff action or Commission rulemaking to resolve the lack of impartiality in the disclosure of preliminary voting information, CII has worked cooperatively with Broadridge and the Society of Corporate Secretaries and Governance Professionals (Society) to develop a three-party confidentiality agreement. The agreement was intended to facilitate the disclosure of preliminary voting information in those circumstances in which a company authorizes Broadridge to disclose the tallies to a shareowner.¹⁴

⁹ NYSE Rule 451 Processing and transmission of Proxy Material (amended Mar. 16, 2003), <http://rules.nyse.com/nyse/help/map/rules-sys468.html>.

¹⁰ Recommendations of the Investor Advisory Committee at 3 n.15.

¹¹ *Id.* (quoting Exchange Act Release No. 38406 (Mar. 14, 1997)).

¹² See, e.g., Mar Letter, *supra* note 2, at 2 ("As a result, we believe the only impartial alternatives are to . . . disclose the interim total number of shares voted, without any detail as to how those shares were voted, to any participant in an active solicitation upon request.")

¹³ See, e.g., May Letter, *supra* note 2, at 3 ("We, therefore, respectfully request that the SEC respond to Broadridge's invitation and our repeated requests by promptly pursuing a limited scope amendment to Rule 14a-2(a).")

¹⁴ We note that the agreement was not intended to be a replacement for Securities and Exchange Commission (SEC) rulemaking or SEC staff guidance interpreting Rule 14a-2(a)(1) nor was it intended to be a concession that execution of a confidentiality agreement was necessary. See, e.g., Recommendations of the Investor Advisory Committee at 10 ("The failure to act in an impartial manner with respect to the disclosure of preliminary voting results cannot be justified based upon the need for confidentiality.")

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Just last month, we were both surprised and disappointed to learn for the first time that the agreement that CII had been providing comments on for almost a year—and which the Society was preparing to post to its website for member use—was declared unacceptable by Broadridge.

Broadridge indicated that it would not execute the agreement because its current procedures do not allow it to provide voting tallies to shareowners unless the communication relating to the shareowner's proposal qualifies as an exempt solicitation under Rule 14a-2(b)(1)¹⁵ and Broadridge is paid to distribute proxy materials. Upon learning of this new information, we requested that Broadridge expeditiously revise its procedures to accommodate the terms of the agreement. To date, Broadridge has failed to take such action.¹⁶

Thank you again for your consideration of long-term institutional investors' concerns and frustration with the continued lack of impartiality surrounding the disclosure of preliminary voting information. We look forward to SEC staff or Commission action to resolve this long-standing problem. If you have any questions regarding this matter, please contact me directly at 202-261-7081 or jeff@cii.org.

Sincerely,



Jeff Mahoney
General Counsel

¹⁵ 17 C.F.R. 240.14a-2.

¹⁶ We note that Broadridge Financial Solutions revised its procedures to deny preliminary voting results to certain shareowners during the middle of the 2013 proxy season within hours after it reportedly “received a call from an employee of the Securities Industry and Financial Markets Association, Wall Street’s main lobbying group, requesting that Broadridge cut off access to organizations that are sponsoring proposals” Susanne Craig & Jessica Silver-Greenberg, *Shareholders Denied Access to JPMorgan Vote Results*, DealBook, N.Y. Times, May 15, 2013, at 2, http://dealbook.nytimes.com/2013/05/15/jpmorgan-voters-are-denied-access-to-results/?_r=0.